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In re Application of
GORSUCH, et al.
Application No. 10/776,424
Filed: February 11, 2004
Attorney Docket No. **TAN-2-1404.06.US**

DECISION GRANTING PETITION
UNDER 37 CFR 1.313(c)(2)

This is a decision on the petition under 37 CFR 1.313(c)(2), filed January 12, 2009, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **DISMISSED AS MOOT.**

Unfortunately, the petition was not received within sufficient time to avert the issuance of the application into a patent. Petitioner's attention is directed to 37 CFR 1.313(d), which states:

A petition under this section will not be effective to withdraw the application from issue unless it is actually received and granted by the appropriate officials **before the date of issue** (Emphasis added).

In this case, the petition was not received in the Office of Petitions for consideration until 5:28 pm on January 12, 2009, after the office had closed. Therefore, as the case has now issued into patent no. 7,477,900, the petition to withdraw from issue cannot be granted.

The request for continued examination (RCE) filed concurrently with the petition is improper in view of the issuance of this application into a patent and will not be processed. Accordingly, the \$810 filing fee and the \$130 petition fee submitted are unnecessary and will not be refunded to petitioner's deposit account no. 09-0435.

The information disclosure statement has been made of record in the file of the above-identified application without further consideration. See 37 CFR 1.97(i).

Telephone inquiries should be directed to the undersigned at (571) 272-7253.

/Monica A. Graves/
Petitions Examiner, Office of Petitions